



Gaithersburg

A CHARACTER COUNTS!

CITY OF GAITHERSBURG
MINUTES OF A REGULAR CITY COUNCIL MEETING
MONDAY, JUNE 18, 2007

A meeting of the Mayor and City Council was called to order at 7:30 p.m. by Jameka Watts (Student, Gaithersburg Elementary School [GES]) and Mayor Katz presiding. Council Members present: Alster, Edens, Marraffa, Schlichting (arrived 7:33 p.m.), and Sesma. Staff present: City Manager Humpton, Assistant City Managers Felton and Tomasello, Police Chief King, Director of Public Works, Parks Maintenance and Engineering Arnoult, Capital Projects/Facilities Director Geiling, Planning and Code Administration Director Ossont, Director of Planning Pruss, Human Services Director Carr, Community Development Director Kauffmann, Grants Administrator Boyle, Planners Patula and Seiden, Environmental Services Director Shingara, Cultural Arts Director Kayser, Aquatics Facility Director Bullough, City Attorney Borten and Executive Assistant Stokes. Planning Commissioners present for joint public hearing: Bauer, Kaufman and Winborne.

I. PLEDGE OF ALLEGIANCE

The Pledge was led by Jameka Watts, 4th Grade Student, GES, Gaithersburg, Maryland.

II. INVOCATION

The invocation was led by the Reverend Gail Unterberger, Pastoral Psychotherapies, Gaithersburg, Maryland.

III. APPROVAL OF MINUTES

Motion was made by Council Member Alster, seconded by Council Member Edens, that the minutes of the Special Budget Public Hearing meeting held May 14, 2007, be approved.

Vote: 4-0

Motion was made by Council Member Edens, seconded by Council Member Marraffa, that the minutes of the Mayor and Council meeting held May 21, 2007, be approved.

Vote: 5-0

IV. CONSENT ITEMS

1. Resolution of the Mayor and City Council Authorizing the City Manager to Enter into a Contract for Stormwater Management Facility Maintenance and Repair

This resolution authorized the City Manager to enter into a contract for the above services with Storm Water Management Facilities Repair Group, Inc., 8105 Crabapple Lane, Gaithersburg, Maryland 20879, in an amount not to exceed Twenty-Nine Thousand Twenty-Five Dollars (\$29,025); said funds to be expended from the Capital Improvements Budget

2. **Resolution of the Mayor and City Council Authorizing the City Manager to Enter into an Agreement with Home Care Partners, Inc. Using Unexpended Community Development Block Grant Funds**

Pursuant to the terms of the Community Development Block Grant program, the Mayor and City Council had determined that it is in the best interest of the City to execute an agreement with the above agency to provide home-based personal aid care to low income and disabled elderly residents of the City, including Forest Oak Towers. This resolution authorized the City Manager to execute an agreement with Home Care Partners, Inc., 1234 Massachusetts Avenue, Suite C-1002, NW, Washington, D.C. 20005, in an amount not to exceed Five Thousand Dollars (\$5,000); said funds to be expended from the Operating Budget.

Motion was made by Council Member Edens, seconded by, Council Member Alster, that Consent Agenda (Resolution Nos. R-52-07 and R-53-07), be approved.

Vote: 5-0

V. **APPOINTMENTS**

Resolution Confirming Appointments and Reappointments by the Mayor

This resolution confirmed the following: **Education Committee**, Gloria Aparicio (reappointment), 53 Appleseed Lane, Gaithersburg, Maryland 20878, two-year term; **Gaithersburg Senior Council**, Edward An (appointment), 19 Swanton Lane, #100, Gaithersburg, Maryland 20878, two-year term; **Multicultural Affairs Committee**, Jennifer Blackwell (reappointment), 20 Filbert Court, Gaithersburg, Maryland 20879, two-year term; and the **Olde Towne Advisory Committee**, Neville Sinclair (appointment), 213 High Timber Court, Gaithersburg, Maryland 20879.

Motion was made by Council Member Sesma, seconded by, Council Member Alster, that a RESOLUTION OF THE CITY COUNCIL CONFIRMING APPOINTMENTS AND REAPPOINTMENTS BY THE MAYOR TO THE EDUCATION COMMITTEE, GAITHERSBURG SENIOR COUNCIL, MULTICULTURAL AFFAIRS COMMITTEE, AND OLDE TOWNE ADVISORY COMMITTEE (Resolution No. R-54-07), be approved.

Vote: 5-0

VI. **OATH OF OFFICE**

Mayor Katz was joined at the podium by City Manager Humpton to introduce newly hired Chief of Police John King. Police Chief King comes to Gaithersburg from the position of Assistant Chief of Police for Montgomery County, Maryland, where he had been a member of the police department in various capacities since 1981. He holds a Bachelor of Science in Criminal Justice from Marist College, a Master of Science in Criminal Justice from the University of Baltimore, and is a graduate of the 211th session of the FBI National Academy. The City was impressed by Police Chief King's commitment to community policing, his extensive leadership experience, and this innovative approaches to serving a diverse population. Mayor Katz administered the Oath of Office to Chief of Police King. Mr. King thanked his family, professional colleagues from the Montgomery County Police, Gaithersburg Police members, City staff, and the Mayor and City Council.

VII. PRESENTATIONS**1. "If I Were Mayor, I Would....." Essay Contest Winner**

Mayor Katz was joined at the podium by Human Services Director Carr, GES Teacher Alice Byrne and Jameka Watts, GES 4th Grade Student, who was the City's local winner of the Maryland Municipal League's "If I Were Mayor, I Would...." Essay Contest. She read the winning essay for the public and received a gift certificate.

2. Proclamation

Mayor Katz issued a proclamation from the Mayor and City Council designating June 2007, as "*Homeownership Month*" in the City of Gaithersburg. The U.S. Department of Housing and Urban Development asked local jurisdictions receiving Community Development Block Grant funds to participate in homeownership activities. The proclamation was accepted by Grants Administrator Boyle.

3. Presentation by Local Governments Insurance Trusts (LGIT), Awarding a Grant in Support of an Aquatic Risk Seminar

Mayor Katz was joined at the podium by Aquatics Facility Director Bullough and John Burrell, Executive Director for the Local Governments Insurance Trust (LGIT). The City in conjunction with Montgomery County and the City of Rockville, hosted an all day workshop entitled "Aquatic Risk Management". The event was attended by 90 aquatic professionals throughout Maryland and Virginia to receive training with a focus on practices that promote awareness and safety. City staff submitted an application to the LGIT Grants Review Board to determine if they qualified to receive funding. Mr. Burrell presented a check to the City in the amount of \$1,120.

4. Presentation from the City's Compensation Committee

On April 9, 2007, the Mayor and City Council approved a resolution establishing the Ad Hoc Mayor and City Council Compensation Review Committee. Committee Chairman Yale Wiesberg presented the Committee's report with the following specific recommendations:

- That the Mayor and City Council consider a Charter Amendment requiring the appointment of a Compensation Review Committee every four years.
- That the Mayor's salary be increased from \$12,500 per year to \$18,500 per year immediately after the City election in 2009.
- That the City Council's salary be increased to \$15,000 per year effective immediately after the City election in 2009.
- The Committee recommends a \$500 incremental salary increase for the Mayor and City Council during the "out-years" (2010, 2011, and 2012).
- That the Planning Commission's stipend be increased from \$1,500 per year to \$3,000 per year effective July 1, 2007.
- That the recommendations outlined above are discussed at a public forum or meeting prior to a decision being made by the Mayor and City Council.

He stated that the suggested recommendations above could be implemented through Charter Amendments with the exception of the Planning Commission stipend increase, which does not require a Charter Amendment to implement. Mr. Wiesberg expressed appreciation for the years of service of the Mayor and City Council.

Motion was made by Council Member Sesma, seconded by Council Member Alster, that the above be introduced for public hearing.

Vote: 5-0

VIII. PUBLIC APPEARANCES

1. *Mike Strumborg, 104 Brookes Avenue*, asked the Mayor and City Council to insist that individuals giving testimony state their name and address for the record and to know that the citizen opinions of Gaithersburg are being represented. He thanked the Mayor and staff for their efforts and testimony at the recent Liquor Board Hearing. He asked that affordable housing programs be implemented in a fiscal responsible manner and general funds be used.
2. *Cathy Drzyzgula, 16 Walker Avenue*, thanked the City for their support before the Liquor Board. Submitted a petition thanking the City for their efforts regarding the alcohol re-licensing of the 7-Eleven. Mayor Katz thanked the citizens for their support.
3. *Louie Benitez* , expressed concern with baseballs coming into his yard and damage to home and windows due to baseballs from the Kelley Park field. City Manager Humpton responded that older games are being moved from that field and netting will be put in placed.
4. *Jennifer Jones, 26 West Deer Park*, expressed concern with the uncertainty and unexpected expenses with the redevelopment of Broadstone. She stated that no formal notice had been issued to the tenants and expressed concern with losing their relocation benefits. She also expressed concern with enrolling children in schools by mid-August.

Assistant City Manager Felton stated the Planning Commission is expected to make a recommendation to the Mayor and City Council on June 20, 2007 and final action anticipated on July 9, 2007. He stated that progress has been made on the relocation plan and staff and developers are aware of the concerns of the tenants. She stated that the developer is prepared to issue a 120-day notice as soon as an approval is received.

5. *Bertha (inaudible), Broadstone Tenant*, submitted written demands from the current tenants for the Mayor and City Council's review.
6. *Alberto (inaudible), Broadstone Tenant*, asked for a quick decision on the Broadstone redevelopment so that tenants can make the necessary arrangements to relocate.
7. *Tim Bodison (address inaudible), Broadstone Tenant*, referred to the nine demands of Broadstone tenants. He stated that the list is what the tenants need to further their relocation efforts.
8. *Carrie (inaudible), AIM Member, Gaithersburg resident*, expressed support for affordable housing, economic and ethnic diversity. Asked for fairness by the City for the tenants of Broadstone.
9. *Morasi (inaudible), AIM Member, Gaithersburg Resident*, asked that the lives of the tenants of Broadstone not get caught up in bureaucracy. He asked the City to be responsible and meet the demands of the tenants and protect their rights.
10. *(inaudible), Broadstone Tenant*, expressed support for affordable housing. She asked for assistance from the City to relocate.
11. *Sandy (inaudible), Broadstone Tenant*, expressed support for affordable housing in Gaithersburg.
12. *(inaudible), Broadstone Tenant*, stated that she is in need of affordable housing.
13. *D.J. Jones-Reilly*, expressed pedestrian safety concerns with the current crosswalk and bus stop where she resides. She stated that several have received fines for jaywalking and asked for the City's assistance.

IX. FROM THE MAYOR AND CITY COUNCIL/ANNOUNCEMENTS**Council Member Sesma**

1. Congratulated the graduating seniors at Gaithersburg area schools.
2. He and Mayor Katz attended the new ownership ceremony for Forest Oak Towers, hosted by the Housing Opportunities Commission (HOC). He reported that it was a partnership with the City and HOC agreed to purchase and maintain the facility as housing for seniors and the disabled.
3. Welcomed Chief of Police King to Gaithersburg.
4. Thanked the tenants of Broadstone for coming out and testifying.

Council Member Marraffa

1. Echoed a welcome to Chief of Police King to Gaithersburg.
2. Commended the public for getting involved with City government.
3. Announced that the Mayor and City Council held a closed executive session on June 11, 2007, at approximately 9:15 p.m., pursuant to a motion adopted unanimously at a public meeting held immediately prior to the closed meeting also on June 11, 2007. The meeting was closed pursuant to Sections 10-508(a)(7) and 10-508(a)(8), State Government Article, of the Annotated Code of Maryland, to consult with legal counsel to obtain legal advice concerning potential litigation. The topic discussed were legal issues, risks and procedures associated with potential litigation which has been brought to the attention of the City Attorney. Present at the meeting were Mayor Katz, Council Members Alster, Edens, Marraffa, Schlichting, and Sesma, City Manager Humpton and City Attorney Borten. Upon conclusion of the discussion, the closed meeting was adjourned at approximately 9:50 p.m.

Council Vice President Alster

1. Congratulated Jameka Watts, GES 4th Grade Student, who was the City's local winner of the Maryland Municipal League's "If I Were Mayor, I Would...." Essay Contest.
2. Echoed congratulation and welcomed Chief King.
3. Mentioned that the National League of Cities Information Technology Communications Steering Committee identified priorities during their last meeting. One priority was the need to develop a strategy for broadband deployment across the municipalities.
4. Announced that the 4th of July Celebration will be held at the Montgomery County Fairgrounds. Gates will open at 5 p.m., pre-concert games and activities at 6 p.m., concert at 7 p.m., with fireworks at dusk.

Council Member Edens

Announced the vacancies on various City committees.

Mayor Katz

1. Referred to the partnership with HOC to provide a facility such as the Forest Oak Tower which will house seniors and those with disabilities. Mentioned that the City's current senior center was the first partnership with Montgomery County and HOC.
2. Attended a recent Maryland Municipal League Chapter Meeting and a referendum was received from Rollingwood Village near Chevy Chase requesting a letter of support from the league to become a municipality. Staff was directed with the Council's approval to send a letter of support.

3. Announced the following meeting schedule:

- work session on Thursday, June 21, 2007, to receive an overview of the Kentlands Boulevard Commercial District Community Outreach Activities Charrette and to discuss the Concept Plan for the New Youth Center in Olde Towne.
- no work session on Monday, June 25, 2007 (MML Annual Convention in Ocean City, MD)
- no regular meeting on June 2, 2007 (4th of July holiday)
- regular meeting on Monday, July 9, 2007

X. **PUBLIC HEARING**

JOINT - SDP-07-001, Application Requests Approval of an Amendment to Schematic Development Plan, SDP-05-003, Known as Casey East (Parcels 360, 563 and N455) in Gaithersburg, Maryland. The Approved Plan is a Mix of Uses, Including 382 Residential Units, Office, Restaurant, Retail, Service Station, and Public Uses on Approximately 40.10 Acres of Land. The Current Application (SDP-07-001) Requests Approval to Redistribute the Number and Type of Dwelling Units Among the Three Residential Buildings, Reduce the Height of Building C From Seven to Five Stories, Reduce the Mixed Use Retail by 1,700 Square Feet, Increase the Senior Center From 10,000 to 29,500 Square Feet, and Amend the Phasing Plan. The Subject Property is Located Northwest of the Intersection of Maryland Route 355 (North Frederick Avenue) and Watkins Mills Road, Gaithersburg, Maryland

Planner Seiden stated the joint public hearing was advertised in the *Gaithersburg Gazette* on May 30 and June 6, 2007 and 84 exhibits are in the reference file. She stated that the plan approved in June 2006 is a mix of uses, including 382 residential units, office, restaurant, retail, service station and public uses on approximately 40.10 acres of land. The current application is requesting approval to redistribute the number and type of dwelling units among the three residential buildings, reduce the height of Building C from seven to five stories, increase the senior center from 10,000 to 30,000 square feet and amend the phasing plan. Planner Seiden oriented the Mayor and City Council and Planning Commission to the site and the proposed amendments.

Jody Kline, Miller, Miller & Canby, gave a brief review of the application amendments to the plan over the year which includes the Watkins Mill Road Extended (signed agreement), the police station, and the proposal for a larger senior center.

Gary Unterberg, Rodgers Consulting, reviewed the proposed changes to the phasing plan for the above. He oriented the Mayor and City Council and Planning Commission with the amended site and its square footage, increase and decrease of dwelling units in the various buildings, road networks and mix uses. He stated that the total number of units remain the same, but relocated some of the mix use retail so that the proposed senior center can be increased in square footage. Mr. Unterberg gave a side by side comparison of the phasing of the buildings and reviewed the architecture, elevations, building façade and streetscapes. The amendments to the parking and senior center reduces the impact to the stream valley buffer. Mayor Katz questioned the school and traffic impact with the change in phasing, parking, and the increase in square footage and asked that staff be provided with numbers for review.

Speakers from the public:

1. *Blanche Keller, 911 Wild Forest Drive*, asked seniors present to join her at the podium to show support for the increased square footage for the proposed senior center. Commended the developer on their efforts to amend the plan and asked the City to establish a committee to determine the components for the new senior center.

2. *Jeannie Pizzonia, 9816 Islandside Drive*, thanked the Mayor and City Council and the developer for the proposed larger senior center. Echoed establishing a committee to identify the components of the center. Expressed the support of the Montgomery Village Foundation.
3. *Annette Thompson, 17605 Parkridge Drive*, thanked the developers for increasing the space for the proposed senior center to meet the needs of the growing senior population. Urged the City Council to seek additional funding from the County.
4. *Bobbie Rosenfeld, Gaithersburg Senior Council Member*, thanked the Mayor and City Council for her appointment to the Gaithersburg Senior Council and thanked the City and the developer for the support shown to the seniors.
5. *Nisha Jagannath, 14628 Settlers Landing Way*, stated she is proud to live in the City of Gaithersburg. Further stated that preventive measures for seniors will save money in the future.
6. *Bob Moore, Montgomery Village Resident*, stated the proposed senior center is needed for the present and for the future. Thanked the Mayor and City Council for their efforts.

There were no other speakers at the hearing. Council Member Schlichting questioned and emphasized the importance of incorporating pedestrian connections from the senior center to the mix uses.

Motion was made by Commissioner Kaufman, seconded by Commissioner Winborne, that the Planning Commission close their record Wednesday, July 18, 2007, 5 p.m., on the above matter.

Vote: 3-0

Motion was made by Council Member Sesma, seconded by Council Member Schlichting, that the Mayor and City Council close their record Wednesday, August 1, 2007, 5 p.m., on the above matter.

Vote: 5-0

Final action for the above joint public hearing is anticipated on Monday, August 6, 2007.

RECESSED THE MAYOR AND COUNCIL MEETING AT 9:17 P.M.
FOR A HISTORIC DISTRICT COMMISSION MEETING AND RECONVENED AT 9:24 P.M.

XI. ORDINANCES, RESOLUTIONS, AND REGULATIONS

1. Resolution for the Kentlands Mansion Roof Replacement and Brick Tuckpointing Project

This resolution authorized the City Manager to award a contract to the Atlantic Company of America, Inc., 526 King Street, Alexandria, Virginia 22314, in the estimated amount of Three Hundred Eighty-Four Thousand One Hundred Dollars (\$384,100) with a 15 percent contingency; said funds to be expended from the Capital Improvements Budget.

Motion was made by Council Member Edens, seconded by, Council Member Sesma, that a RESOLUTION OF THE MAYOR AND CITY COUNCIL AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT FOR THE KENTLANDS MANSION ROOF REPLACEMENT AND BRICK TUCKPOINTING PROJECT (Resolution No. R-55-07), be approved.

Vote: 5-0

2. Resolution for Construction of Storm Water Management Water Quality Structures

This resolution authorized the City Manager to enter into a contract for construction of water quality structures at the Public Works Facility to AccuBid Excavation, Inc., 1010 Deer Hollow Drive, Mt. Airy, Maryland 21771, in the estimated amount of Four Hundred Ten Thousand Dollars (\$410,000); said funds to be expended from the Capital Improvements Budget.

Motion was made by Council Member Alster, seconded by, Council Member Sesma, that a RESOLUTION OF THE MAYOR AND CITY COUNCIL AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT FOR CONSTRUCTION OF STORM WATER MANAGEMENT WATER QUALITY STRUCTURES AT THE PUBLIC WORKS FACILITY (Resolution No. R-56-07), be approved.

Vote: 5-0

3. Resolution Approving a Waiver of the Environmental Standards

This resolution approved the request for a waiver of the *Environmental Standards for Development Regulation* to permit, at a maximum, 1.12 acres of disturbance within the stream valley buffer at the Crown Property, including the Diamondback Road grading tie out, two stormwater management pond outfalls, a stormwater management pond grading tie out, two storm drain safe conveyance structures, and two sewer connections, is subjected with approval to the following conditions:

1. The limits of disturbance and concept designs outlined in the waiver application are not absolute and may be modified by staff during final engineering and field coordination to minimize clearing, grading, tree removal, and encroachments into stream and wetland buffers;
2. The applicant will obtain all necessary approvals and permits from all local, County, State, and Federal findings agencies prior to disturbing the stream valley buffer;
3. The applicant will obtain all necessary approvals and permits for offsite impacts related to environmental waivers from offsite property owners and, or Montgomery County permitting agencies prior to the issuance of City development permits for each phase;
4. The applicant will provide final engineering, pond reclamation, and construction details as part of the approval process of the final forest conservation plan, stormwater management plan, and/or sediment and erosion control plans to be approved by staff and other permitting agencies prior to the issuance of City development permits for each phase;
5. As part of the project's onsite mitigation plan, the applicant will develop and implement approximately 700 linear feet of stream restoration utilizing natural channel design and bioengineering approaches; approximately 0.34 acres of wetland reclamation and reforestation; and contribute \$1.00 per square foot of encroachment into the stream valley buffer, at the time of issuance of rough grading, at a rate of 1.5 to 1.0, to be used by Gaithersburg to enhance stream quality at a location to be determined off-site within the Muddy Branch Watershed;
6. Storage or deposition of equipment, trucks, materials, waste, or debris within the stream buffer is prohibited;
7. Upon the completion of construction, the applicant shall properly stabilize and restore all disturbed areas to natural conditions as soon as practicable, including the removal and proper disposal of refuse and debris as directed by City inspectors; and

8. The applicant will obtain stream restoration final design approval and MDE permits and will commence with restoration construction prior to the issuance of the first building permit for Neighborhood Two (2).
9. Prior to the issuance of rough grading permits, the applicant will submit letters of intent from offsite property owners to grant the necessary sewer and storm drain easements.

Motion was made by Council Member Marraffa, seconded by, Council Member Alster, that a RESOLUTION OF THE MAYOR AND CITY COUNCIL APPROVING A WAIVER OF THE ENVIRONMENTAL STANDARDS FOR DEVELOPMENT REGULATION TO PERMIT, AT A MAXIMUM, 1.12 ACRES OF DISTURBANCE WITHIN THE STREAM VALLEY BUFFER AT THE CROWN PROPERTY (Resolution No. R-57-07), be approved.

Vote: 5-0

4. Resolution for the Design, Fabrication and Installation of a Mural in Olde Towne

This resolution authorized the City Manager to negotiate and execute a contract for the above services to Studio William Cochran, Inc., 7192 Meadowbrooke Drive, Frederick, Maryland 21702, the amount of Thirty-Five Thousand Dollars (\$35,000); said funds to be expended from the Capital Improvements Budget.

Motion was made by Council Member Alster, seconded by, Council Member Edens, that a RESOLUTION OF THE MAYOR AND CITY COUNCIL AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A CONTRACT FOR THE DESIGN, FABRICATION AND INSTALLATION OF A MURAL IN OLDE TOWNE, AN ART IN PUBLIC PLACES PROJECT (Resolution No. R-58-07), be approved.

Vote: 5-0

5. Resolution to Negotiate and Execute a Memorandum of Understanding (MOU) for the Installation and Maintenance of a City Owned Mural

This resolution authorized the City Manager to negotiate and execute a MOU with Kaz Brothers Development for the installation and maintenance of a mural on the building at 227 East Diamond Avenue, Gaithersburg, Maryland.

Motion was made by Council Member Edens, seconded by, Council Member Sesma, that a RESOLUTION OF THE MAYOR AND CITY COUNCIL AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A MEMORANDUM OF UNDERSTANDING FOR THE INSTALLATION AND MAINTENANCE OF A CITY OWNED MURAL ON THE BUILDING AT 227 EAST DIAMOND AVENUE, GAITHERSBURG, MARYLAND (Resolution No. R-59-07), be approved.

Vote: 5-0

6. Resolution to Negotiate and Execute an Easement for the Installation and Maintenance of a City Owned Mural

This resolution authorized the City Manager to negotiate and execute a façade Easement Agreement with the Kaz Brothers, owners of the building located at 227 East Diamond Avenue, Gaithersburg, Maryland. The City Manager was further authorized to proceed with the easement agreement and execute such documents and take such action as is necessary to affect the mural for said property. The agreement shall be incorporated by reference as part of the resolution with the terms and conditions thereof.

Motion was made by Council Member Sesma, seconded by, Council Member Marraffa, that a RESOLUTION OF THE MAYOR AND CITY COUNCIL AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE AN EASEMENT FOR THE INSTALLATION AND MAINTENANCE OF A CITY OWNED MURAL ON THE BUILDING AT 227 EAST DIAMOND AVENUE, GAITHERSBURG, MARYLAND (Resolution No. R-60-07), be approved.

Vote: 5-0

7. An Emergency Ordinance to Amend Section 15-9, Subsection (f) of the City Code, Entitled "Solicitation in Roadways," so as to Amend the Effective Date of Ordinance O-4-07 Adopting Section 15-9(f), and Providing for Future Changes to the Effective Date by Resolution

City Attorney Borten stated that a public hearing was held on the above amendment on May 21, 2007, and the record closed June 13, 2007. The amended emergency ordinance changes the effective date in Section 15-9(f) to September 1, 2007 and will go into effect immediately. The amendment also provides that, should additional changes to the effective date be required in the future, the Council may make such changes by resolution.

Motion was made by Council Member Edens, seconded by, Council Member Alster, that AN EMERGENCY ORDINANCE TO AMEND SECTION 15-9, SUBSECTION (F) OF THE CITY CODE, ENTITLED "SOLICITATION IN ROADWAYS," SO AS TO AMEND THE EFFECTIVE DATE OF ORDINANCE O-4-07 ADOPTING SECTION 15-9(F), AND PROVIDING FOR FUTURE CHANGES TO THE EFFECTIVE DATE BY RESOLUTION (Ordinance No. O-7-07), be approved.

Vote: 5-0

8. An Ordinance to Adopt the City Budget for the FY July 1, 2007, Through June 30, 2008

Assistant City Manager Tomasello stated a public hearing was held on May 14, 2007. During the public hearing, the Mayor and City Council voted to close the record on June 13, 2007. The ordinance institutes an ad valorem tax on all assessable property within the City. Said tax was set at a rate of \$.212 on each \$100 of assessed value of real property and \$.53 on each \$100 of assessed value of personal property. He stated that the Mayor and City Council directed staff to incorporate several amendments to the proposed FY '08 Budget. The total anticipated revenue budget is \$50,639,235, with a reappropriation of \$3,677,660. The proposed expenditure budget, including Capital Improvements Project is \$50,639,235. The expenditure budget with amendments increased \$236,494, which is offset by \$83,232 in increased revenues for a net change to the fund balance of \$153, 262.

Mayor Katz asked that the City Council reconsider transferring the funds for a homeownership assistance program from contingency until further discussions are held.

Motion was made by Council Member Schlichting, seconded by, Council Member Marraffa, that AN ORDINANCE TO ADOPT THE CITY BUDGET FOR THE FISCAL YEAR JULY 1, 2007, THROUGH JUNE 30, 2008, AND LEVYING AN AD VALOREM TAX ON ALL ASSESSABLE PROPERTY WITHIN THE CITY OF GAITHERSBURG, MARYLAND (Ordinance No. O-9-07), be approved as proposed by staff.

No vote was taken at this point and Mayor Katz read the following written statement: Since a majority of the Council would not reconsider the request to leave the money for the proposed Homeownership Assistance Program in contingency until we have the opportunity to discuss it, and so that I can be as clear as possible on this situation I have a written statement. I obviously, have given this matter a great amount of thought and I am sincerely sorry that it has come to this. I am in favor of a Homeownership Assistance program. One that I would hope will be a better program than the pilot one we have had. My greatest concern is the lack of discussions on it and to make certain that it is what we all want it to be, assisting the most people and know its funding source. For the public that has not followed the Homeownership Assistance Program as closely as the Mayor and Council, let me very quickly explain it. When the owners of the West Deer Park apartments decided not to renew the leases of the tenants in the apartments so that they could build a new site plan, the tenants needed to relocate. It is my understanding that if this proposed tear down had occurred in Montgomery County, the tenants would have received two months current rent and the property owners would have been required to return the tenants surety deposits to them within 45 days. Since this occurred in Gaithersburg, the tenants through negotiations (and subsequently we have passed an ordinance with all five of the City Council members voting for this ordinance and I signed the legislation as well) that said the tenants would receive three and half months market rent plus the immediate return of their entire surety deposit. In addition the City agreed to a pilot program to see if we could encourage homeownership. The pilot program gave any tenant in the West Deer Park Apartments ten thousand dollars if they purchased a home within Gaithersburg City limits or eight thousand five hundred dollars if they bought it elsewhere. The City was going to fund it by using a part of the building fees the developer would pay to the City. Since those tenants needed to find a new home as quickly as possible the City immediately took action by transferring 220,000 dollars from the contingency of the City. Since that time the developer has decided they did not want to rebuild and therefore never paid for building permits. Of the 198 apartments at West Deer Park apartments, only seven tenants took advantage of this program. Four of the seven bought outside of the City receiving 34,000 dollars and three bought within the City receiving 30,000 dollars. In other words, over half of the money paid directly from City tax dollars with no direct nexus from the developer was paid for people to buy a home outside the City of Gaithersburg. In addition to that, the only people eligible for this program are the people who were living in the West Deer Park apartments even though everyone throughout the City's tax dollars are being used. I believe there is agreement that we need to discuss the program and what is working and what is not. We have heard from several people who are concerned about the tenants of Broadstone Apartments and how not having this program could affect them. I am very concerned about them as well. Let me remind everyone that the record on Broadstone Apartments is still open. NO decision has been made and in fact we are going to discuss when the record will close this evening. We do not know if the ordinance to rezone Broadstone will pass or not. As part of the discussions on the budget, Council Member Sesma asked for an additional \$250,000 be added to our budget. Let me also be very clear I believe that many people who rent in the City have shown their commitment to our community time and time again. But I also realize that homeownership is truly a wonderful achievement and believe the City should discuss ways that we believe could be helpful for people to achieve that dream. And I believe we need to have frank and candid public discussion on what is working and what is not with this current pilot program and any future programs. I am also concerned that there is a lack of consistency on how a decision is being considered. When the proposed Emergency Manager Position was placed in the proposed budget in the City Manager's Office for \$76,452.00. The Council decided we should move that money to the Police budget because we had not discussed the position but yet when there is a

request for discussion for the homeownership program, it is well we have three Council Members who agree and since it is only 250 thousand dollars of a 50 Million Dollar budget move the money right now from the operating contingency and discuss it later. Contingency money is money that I believe should be used for emergency situations. And at this moment, I fail to see the emergency. We do not have anyone at this moment eligible for this program. We do not have a funding source for this program. And we still have 147,000 dollars left from the original sum the City transferred when it was an emergency. We don't know if 250,000 dollars is the correct sum or if we need more or less. But perhaps what is even more important to me is that I am very concerned when someone believes that getting the minimum number of votes to pass something is good enough. I have heard with greater and greater concern statements like quote "I hope you appreciate such clear direction from three Council Members" unquote and to make matters even worse there has been a time when two of the three involved in making that statement did not even mention their thoughts in public but simply sent an email a few hours after a publicly televised City meeting. The public and all the members of the Mayor and Council need to hear the thoughts for decisions and to give their thoughts on the matter as well to see if what is being proposed is the best legislation that it could possibly be for our community. That is one of the reasons that I remind everyone that the budget is an ordinance and if I would veto it, would require four Council Members to override that veto. Let me be very clear I have never vetoed anything and it is my sincerest hope to never veto. In fact I consider a veto to be the last possible option. But I believe the public and all of the Council Members need to be heard and be given the respect they deserve. If it takes me vetoing a budget to achieve that then I will be very saddened. But I believe that knowingly or unknowingly a majority of this council is not giving the respect to the public and the other members of the Council. I believe the attitude by some that since we have reached the minimum number of votes we can stop listening, needs to end. I started this statement this evening by saying I am sincerely sorry that this matter has come to this and I truly am. It is my greatest hope and desire to put all of this behind us. To build on a renew spirit working together, listening to each other. I ask that we put aside our own personal agendas and pet projects and continue working together for the entire City. No one will be injured by waiting for the discussions and many will gain.

Council Member Marraffa responded and clarified that several Council Members agreed that funds should be set aside in a line item for a homeownership assistance program to send a message to the tenants at Broadstone that the City is committed to assisting them.

Council Members Edens expressed support for a homeownership assistance program, but did not agree with putting a line item in the budget to fund a program that has not yet been discussed and defined. She agreed with Mayor Katz to conduct a discussion as soon as possible and determine at what level the program should be funded before deciding to move funds.

Council Vice President Alster echoed support for a homeownership assistance program. He stated that contingency funds are set aside for emergencies and he would support moving the funds if there was such an emergency. He stated that the Mayor and City Council had yet to hear from staff and the residents about what worked in the pilot program for homeownership. He stated that criteria should be discussed for a homeownership assistance program.

Council Member Sesma stated that he understood that there was a consensus at the Mayor and City Council Annual Retreat in January 2007 to continue and expand the pilot for pending projects. He thanked staff for the proposed amended budget showing the net change to fund balance at \$153,000, not \$250,000. He expressed support for future discussions, but believes that the City has the responsibility to respond to the testimony received from those that are being impacted and displaced from their homes.

Council Member Schlichting stated his position has been consistent since the Mayor and City Council Annual Retreat with the exception of the dollar amount. He clarified that he sent an email which stated that he had hope that the City Manager appreciates clear direction from three City Council Members. He stated the email was sent following public discussions on the matter. He expressed support for the program and future discussions, but did not necessarily agree with the amount of funding. He stated that he would be disappointed if they Mayor vetoed the budget.

A motion was made and seconded prior to the Mayor Katz' statement to adopt the FY '08 budget as proposed by staff.

Vote: 3-2 (Opposed: Alster, Edens)

Mayor Katz stated that there is a potential for a veto of the proposed budget. The Ordinance was delivered to Mayor Katz for signature. According to the City's Charter, the Mayor has seven days to sign or veto the ordinance. The Council may override the Mayor's veto, but must do so with a favorable vote of four Council Members, and they must do so within 35 days of the veto. Mayor Katz asked for an executive session immediately following the meeting to consult with legal Counsel to obtain legal advice concerning issues and potential liabilities raised by a veto of an ordinance enacting the FY '08 budget and asked for a motion.

Motion was made by Council Member Edens, seconded by, Council Member Alster, to conduct a closed executive session on Monday, June 18, 2007, immediately following the regular meeting of the Mayor and City Council, pursuant to Section 10-508(a)(7) State Government Article, of the Annotated Code of Maryland, to consult with legal counsel to obtain legal advice. The topics to be discussed are the legal issues and potential liabilities raised by a veto of an ordinance enacting the FY '08 budget, and the processes for proceeding after said veto.

Vote: 3-0-2 (Abstained: Schlichting, Sesma)

In addition, Mayor Katz called for a special meeting to be held on Thursday, June 21, 2007, to discuss the potential veto of the budget, followed by the scheduled work session discussion topics.

Council Member Sesma stated that such an action to veto the budget should be discussed and made a part of the public record. City Attorney Borten stated that she represents the Mayor and City Council and that legal advice concerning the veto of the budget and how to proceed was requested. She further stated that the Mayor and City Council have the authority under the meeting act to go into a closed session to obtain legal advice before discussing a matter publicly. Council Member Sesma questioned the distinction between the facts of a veto and the consequences of a veto. City Attorney Borten stated that when legal advice is given, the legal theory is being applied to the facts and cannot be separated. City Manager Humpton recommended that the Mayor and City Council go through the executive session process and discuss with City Attorney Borten what would be shared with the public.

9. Establishing a Constant Yield Tax Rate for the City of Gaithersburg for the Fiscal Year July 1, 2007 Through June 30, 2008

Staff recommended that the Mayor and City Council vote to set the constant yield tax rate at \$.212 to become effective July 1, 2007.

Motion was made by Council Member Alster, seconded by Council Member Marraffa, that the Constant Yield Tax Rate for the City of Gaithersburg for the Fiscal Year July 1, 2007 Through June 30, 2008, be set at \$.212.

Vote: 5-0

10. Resolution Codifying and Updating a Schedule of Fees, Charges, Fines and Expenses

Planning and Code Director Ossont stated that staff conducts an annual review of the City's charges, fines and expenses. The proposed increases are attributed to increased review or inspection requirements and comparable to other neighboring jurisdictions. He noted the increased fines for overcrowding and emergency egress violations as well as the increase for "fee in lieu" of forest conservation requirements.

Motion was made by Council Member Sesma, seconded by, Council Member Marraffa, that a RESOLUTION CODIFYING AND UPDATING A SCHEDULE OF FEES, CHARGES, FINES AND EXPENSES AS PROVIDED FOR IN THE ORDINANCES OF THE CITY OF GAITHERSBURG (Resolution No. R-61-07), be approved.

Vote: 5-0

11. Resolution Authorizing the Use of the Diebold AccuVote Optical Scan System and the AutoMark System as Voting Equipment

Assistant City Manager Felton stated that the resolution would authorize the Board of Supervisors of Election to use the above system and equipment for the November 6, 2007 City Election and any run off Election that may be required by the City Charter. Mr. Felton added that paper ballots would be available as back up, if needed.

Motion was made by Council Member Schlichting, seconded by, Council Member Edens, that a RESOLUTION OF THE MAYOR AND CITY COUNCIL AUTHORIZING THE USE OF THE DIEBOLD ACCUVOTE OPTICAL SCAN SYSTEM AND THE AUTOMARK SYSTEM AS VOTING EQUIPMENT FOR THE NOVEMBER 6, 2007 CITY ELECTION AND ANY RUN OFF ELECTION THAT MAY BE REQUIRED BY THE CITY CHARTER (Resolution No. R-62-07), be approved.

Vote: 5-0

XII. POLICY DISCUSSION AND STAFF GUIDANCE**1. An Ordinance to Repeal and Reenact Chapter 11 of the City Code (Fire Safety) to Adopt With Amendments the Montgomery County Fire Safety Code and Various Related National Codes and Standards**

Motion was made by Council Member Edens, seconded by, Council Member Marraffa, that AN ORDINANCE TO REPEAL AND REENACT CHAPTER 11 OF THE CITY CODE (FIRE SAFETY) TO ADOPT WITH AMENDMENTS THE MONTGOMERY COUNTY FIRE SAFETY CODE AND VARIOUS RELATED NATIONAL CODES AND STANDARDS (Ordinance No. O-8-07), be approved.

Vote: 5-0

2. Resolution of the Mayor and City Council of Gaithersburg Granting Approval of Schematic Development Plan SDP-04-001, Quince Orchard Park, Parcel A, The Vistas, Winter Walk Drive and Quince Orchard Road, Gaithersburg, Maryland

Planner Seiden gave a brief history on the above schematic development plan. She stated that a joint public hearing was held on December 6, 2004, and based on guidance, the plan was revised to reduced the density and enhance design elements required as part of the MXD review process. The revised plan was reviewed during joint work sessions held April 11, 2005 and September 25, 2006. During the work sessions, the density was further lowered, the quality of open space was improved, and on-site reforestation requirements were addressed. The current application proposes 83 residential units, 13 single family detached units, 38 townhomes, 32 two-over-two condominiums, two interior courtyards, a ½ acre of open space, and pedestrian connections to the existing community from the proposed community. On March 7, 2007, the Planning Commission recommended approval with 13 conditions which addressed the issue of whether an annexation or an agreement could be made with the Quince Orchard Park Community Association. She noted that the association did not get enough votes for annexation and another vote cannot be taken for another year. Planner Seiden stated that staff has asked the applicant Churchill Development Corp. to come in with an alternative plan with amenities, if an agreement is not met for the proposed plan. She added that under the annexation agreement with Quince Orchard Park in 1991, the development on the proposed site is exempt from the City's affordable housing and adequate public facilities requirements and the completion of design guidelines. The Mayor and City Council expressed concern with condition #14 of the draft resolution which states, prior to approval of the final site plan, applicant is required either to 1) enter into an agreement with the Quince Orchard Park Community Association that physically integrates the two communities through annexation, cross easements or shared facility agreement using the October 2006 Memorandum of Understanding as a minimum basis for such agreement; or 2) incorporate the expanded amenities package presented in Exhibits #147-#156 into the final site plan with completion of the amenities to be established by the Planning Commission in a time frame similar to Condition #2. Staff was directed to review condition #14 to ensure that the language is not a disincentive for an annexation. The Mayor and City Council stressed the importance of integration of the Vistas and Quince Orchard Park communities and the use of amenities. Staff stated that Quince Orchard Park did express an interest to further discuss the merger of the communities and the parameters of a memorandum of understanding. All concurred that staff move forward with the plan because of legal issues and was further directed to meet with the parties involved to discuss and encourage the integration of the communities.

XIII. FROM STAFF

Director of Planning Pruss stated that on January 16, 2007 a joint work session was held on schematic development plan application SDP-06-004 and rezoning application Z-304, Fairfield at West Deer Park. On February 12, 2007, a joint work session was held where staff gave an update on the progress of the plan. On June 14, 2007, the Planning Commission record closed and recommendation to the Mayor and City Council are scheduled for June 20, 2007. Concern was expressed for receiving information regarding the Broadstone tenant's package before the close of the record. Assistant City Manager Felton stated that staff would recommend that the City Council vote to approve the rezoning and the SDP on July 9, 2007, with an amendment of the final condition stating that the applicant can negotiate and execute a relocation plan with the City Manager prior to final site plan approval by the Planning Commission.

1. Staff Recommendation to Close the Record on Z-304 as of 5 p.m. on Thursday, June 28, 2007 (Application to Rezone 14.157 Acres of Land, the Broadstone Apartments, Located at the Intersection of MD 355 and West Deer Park Road), with final action scheduled for July 9, 2007.

Motion was made by Council Member Alster, seconded by Council Member Edens, that the Mayor and City Council close their record Thursday, May 31, 2007, 5 p.m., on the above.

Vote: 5-0

2. **Staff Recommendation to Close the Record on SDP-06-004 as of 5 p.m. on Thursday, June 28, 2007** (*Applicant Requests the Redevelopment of 14.157 Acres of Land, , the Broadstone Apartments, Located at the Intersection of MD 355 and West Deer Park Road*), with final action scheduled for July 9, 2007.

Motion was made by Council Member Alster, seconded by Council Member Edens, that the Mayor and City Council close their record Thursday, May 31, 2007, 5 p.m., on the above.

Vote: 5-0

XIV. ADJOURNMENT

There being no further business to come before this session of the City Council, the meeting was duly adjourned at 10:56 p.m.

Respectfully submitted,

Doris R. Stokes

Doris R. Stokes
Executive Assistant